

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

J. MARK WHITEMORE, individually and)
a/n/f of C.H. a minor)
and)
J. MARK WHITMORE, individually and)
a/n/f of M.H. a minor)
Plaintiffs,)
VERSUS) No. 2:23-cv-00006
JOHN DOE #1 A English Teacher;)
JOHN DOE #2 a History Teacher;)
JOHN DOE #3 a Math Teacher;)
JOHN DOE #4, a Physical Education teacher;)
PUTNAM COUNTY BOARD OF)
EDUCATION; PUTNAM COUNTY)
SCHOOL DISTRICT/SYSTEM;)
UPPERMAN HIGH SCHOOL; and)
STEPHEN ROBBINS, in his official and)
individual capacity as Principal of Defendant)
Upperman High School)
Defendants.)

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Comes the Defendant, Putnam County Board of Education, by special appearance,
and files this Memorandum of Law in support of its Motion to Dismiss.

The Complaint filed in this cause is styled *J. Mark Whitemore, individually and a/n/f of C.H. a minor and J. Mark Whitmore, individually and a/n/f of M.H. a minor.*

It is presumed that a/n/f means as next friend. However, there is no indication that J. Mark Whitmore has any legal relation with either the C.H. or M.H. referenced in the

complaint. Because the Putnam County Board of Education cannot identify any current for former students C. H, or M. H. that could have a relationship with J. Mark Whitemore, these allegations are likely simply false. At a bare minimum, facts must be pled in accordance with *Twombly* and *Iqbal* to sufficient articulate a claim. While the Board of Education understands that Rule 12(b)(6) tests the sufficiency of the Complaint, it is important to state that upon information and belief, absolutely no such events occurred, and this scurrilous, scandalous, and defamatory Complaint, should be held to the strictest standards under *Twombly* and *Iqbal*, and this suit should not be allowed to proceed without specific facts pled.

Rule 17 of the Federal Rules of Civil Procedure specifically provides as follows:

“Plaintiff and Defendant; Capacity; Public Officers;

* * *

(c) Minor or Incompetent Person.

(1) With a Representative. The following representatives may sue or defend on behalf of a minor or an incompetent person:

- (A) a general guardian;
- (B) a committee;
- (C) a conservator; or
- (D) a like fiduciary.

(2) Without a Representative. A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem - - or issue another appropriate order - - to protect a minor or incompetent person who is unrepresented in an action.”

In this particular case, J. Mark Whitmore is neither a guardian, a committee, a conservator, nor identifies himself as a fiduciary. Moreover, he does not indicate that he has any legal relationship with C.H. or M.H. that would authorize him to be a next friend, such as a parent, legal guardian, or custodian.

Accordingly, it is respectfully submitted that unless J. Mark Whitmore can establish that he can comply with Rule 17(c) of the Federal Rules of Civil Procedure, his suit must be dismissed in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure which specifically states:

“A claim can be dismissed for failure to state claim upon which relief may be granted.”

Moreover, in the *pro se* Complaint filed by J. Mark Whitmore, he does not identify John Doe #1; John Doe #2; John Doe #3; or John Doe #4 and does not give any specific reference to which this Defendant can identify said individuals. He also does not give any indication as to the identity of either C.H. or M.H.

This Defendant also moves the Court to require J. Mark Whitmore to identify the specific identity of the individuals who are unnamed in the Complaint to the attorneys for the Putnam County Board of Education.

It is respectfully submitted that the Court should dismiss this case for failure to comply with Rule 17(c)(1) of the Federal Rules of Civil Procedure.

Respectfully submitted,

MOORE, RADER,
FITZPATRICK & YORK, P.C.

/s/ Daniel H. Rader III

DANIEL H. RADER, III / BPR #002835
DANIEL H. RADER, IV/BPR #025998
Attorneys for Defendant by special appearance,
Putnam County Board of Education
46 N Jefferson Avenue
Cookeville, TN 38501
Phone: (931) 526-3311

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was filed electronically on February 27, 2023. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

Mr. J. Mark Whitemore
6736 Martin Road
Baxter, Tennessee 38544

This the 27th day of February, 2023.

/s/ Daniel H. Rader III

DANIEL H. RADER, III, BPR #002835